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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the World Muslim Congress, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[21 August 2018]

* Issued as received, in the language(s) of submission only.

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Indian designs to change the demography of Indian administered Jammu and Kashmir

Indian administered Jammu and Kashmir has a unique relation with the Indian Union. Unlike other states of India, It has its own Constitution, separate flag, State Subject laws, and United Nations resolutions representing its exceptionality.

The state of Jammu and Kashmir has throughout enjoyed its own independent sovereign character. It was neither part of British India nor it acceded to British India or any kind of "Federation" having its own Constitution till 26th October 1947.

On 26th of October 1947, the then ruler entered into manipulated accession of the state with India against the principles laid down in Indian Independence Act 1935, and wishes of the people. But being a sovereign retained its legislative, executive and judicial powers except to the limited access in respect of three matters i.e. Defense, Foreign Affairs and Communication.

On the basis of this dubious instrument of accession, India occupied nook and corner of Kashmir, which continues till date. Indian committed unprecedented and gross human rights violations since then in Indian administered Jammu and Kashmir, which includes killings, rape and molestations of women, torture, extra-judicial killings, arson, use of pellet shot guns, denial of freedom speech and expression and what not.

These human rights violations were acknowledged by the High Commissioner for Human Rights in his report submitted to United Nations Human Rights Council in 38th Session, and asked India to take measures and repeal those laws which are the main source of these violations.

Jammu and Kashmir by virtue its historical background, circumstances that led to manipulated accession, the commitments made by the Indian leaders for the reference to the people for its future dispensation and United Nations resolutions on Kashmir has made this disputed territory a bone of contention between India and Pakistan and an internationally recognised dispute. This dispute has led to the killing of half a million people so for and hinges the peace in the region.

Failing to win the hearts of the people and bring them in to the Indian fold, the Indian state apparatus manipulated elections, imposed puppet governments, enacted black laws, tempered its legislative power, announced economic packages; but popular demand for the right to self-determination got momentum despite all the hardships and sufferings.

Indian administered Jammu and Kashmir, is a majority Muslim state and enjoys a special status by virtue of various Constitutional guarantees stated in the Indian Constitution and the Instrument of accession. Successive governments in India in connivance with puppet regimes made multiple attempts to turn the Muslim majority in the State into a minority. This process of subjugation and the demographic change, which are strictly prohibited under International laws, were accelerated once BJP came into power in India.

The setting up of Sainik colonies, building separate townships for displaced Kashmiri Pandits, grant of domicile certificate to the West Pakistan Refugees (WPRs), transfer 99 acres of Kashmir Valley's forest land to the Shri Amarnathji Shrine Board, allotment of land to Indian industrialists outside the designated industrial area, compelling the state institutions to show Kashmir as part of India, Goods and Services Tax (GST), enactment and implementation of (SARFAESI) Act-2002, were the steps taken towards weakening Kashmiris demographically, socially and economically, which were resisted by valiant Kashmiris and the resistance consumed hundreds of lives.

Fearing to lose Kashmir due to the popular and sustained freedom movement, the BJP Government in power has taken recourse to an engineered judicial process, and has challenged Article 35A of Indian Constitution that protects "State Subject Law" of the disputed state territory through her NGO "We the citizens" in the Supreme Court of India with malafide intentions, which is sub-judice before the apex court.

This Article empowers the State's legislature to define 'permanent residents' of the state and provides special rights and privileges to those permanent residents of Kashmir. The Article was added in the Indian Constitutions by Presidential order, i.e., The Constitution (Application to Jammu and Kashmir) order, 1954 – issued by the President of India on 14 May 1954, exercising the powers conferred by the clause (1) of the Article 370 of the Indian Constitution, and with the concurrence of the Government of the State of Jammu and Kashmir.

This Article has been argued couple of times before the Supreme Court of India during hearing of different constitutional petitions. However, those petitions were dismissed once the Government of India contested these

petitions and submitted counter affidavits about the importance of this Article (35A). In those Constitutional petitions, the Supreme Court of India discussed the importance and obligations for the retention of this article in the Constitution, taking into consideration the disputed nature of State of Jammu and Kashmir, and its historical background for its incorporation in the Constitution.

This time the situation is vice versa. The constitutional petition has been filed before the Supreme Court by the crony NGO of BJP and RSS, on the ground that this Article was not added to the constitution through amendment under Article 368 of the Indian Constitution, and was never presented before the Parliament and came into effect immediately.

The ill designs of filing this petition challenging Article 35A, can be judged from the fact that the BJP Government neither filed any counter affidavit, nor showed any interest to contest this petition before the Supreme Court, as previous governments did in similar petitions. The BJP Government has the complete understanding of situation that once this article is scraped, it will get open field to settle the non-Kashmiris in Jammu and Kashmir, and can achieve its dream of changing the demography of the area.

The demography of Jammu and Kashmir is one of the important components of people's right to self-determination. If BJP Government succeeds in its ill designs, it will surely affect the United Nations Resolutions on Kashmir, which states that the people have the right to decide their fate by majority vote.

The High Commissioner for Human Rights in his report submitted to United Nations Human Rights Council asked India and Pakistan to fully respect the right to self-determination of the people of Kashmir as protected under international law. The recommendation of the High Commissioner for Human Rights can only be implemented, once India respect the state subject laws applicable to Jammu and Kashmir, passed in 1927 before the Independence of India and Pakistan and stop killings of the innocent Kashmiris, whose right to self-determinations dies with their death.

In such circumstances, it is the responsibility of this office to persuade the Government of India to desist from making any such attempts, which may lead to the abrogation of this important constitutional article and other articles related to the special status of Indian administered Jammu and Kashmir or should not take any such step which may frustrate the United Nations Resolutions for the final dispensation of disputed State of Jammu and Kashmir in the larger interest the people of Jammu and Kashmir.